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IN LATIN AMERICA

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November 10-12, 1955

PART III

UNITED STATES TREATIES OF FRIENDSHIP, TRADE AND NAVIGATION
Their religious liberty clauses and the uses made of them
- Hipólito Marcano -

OFFICIAL DATA ON TREATIES OF FRIENDSHIP, TRADE AND NAVIGATION
WITH LATIN AMERICAN COUNTRIES
provided by
Department of State, U.S.A.

COMMITTEE ON COOPERATION IN LATIN AMERICA
of the Division of Foreign Missions of the
National Council of the Churches of Christ
in the U. S. A.

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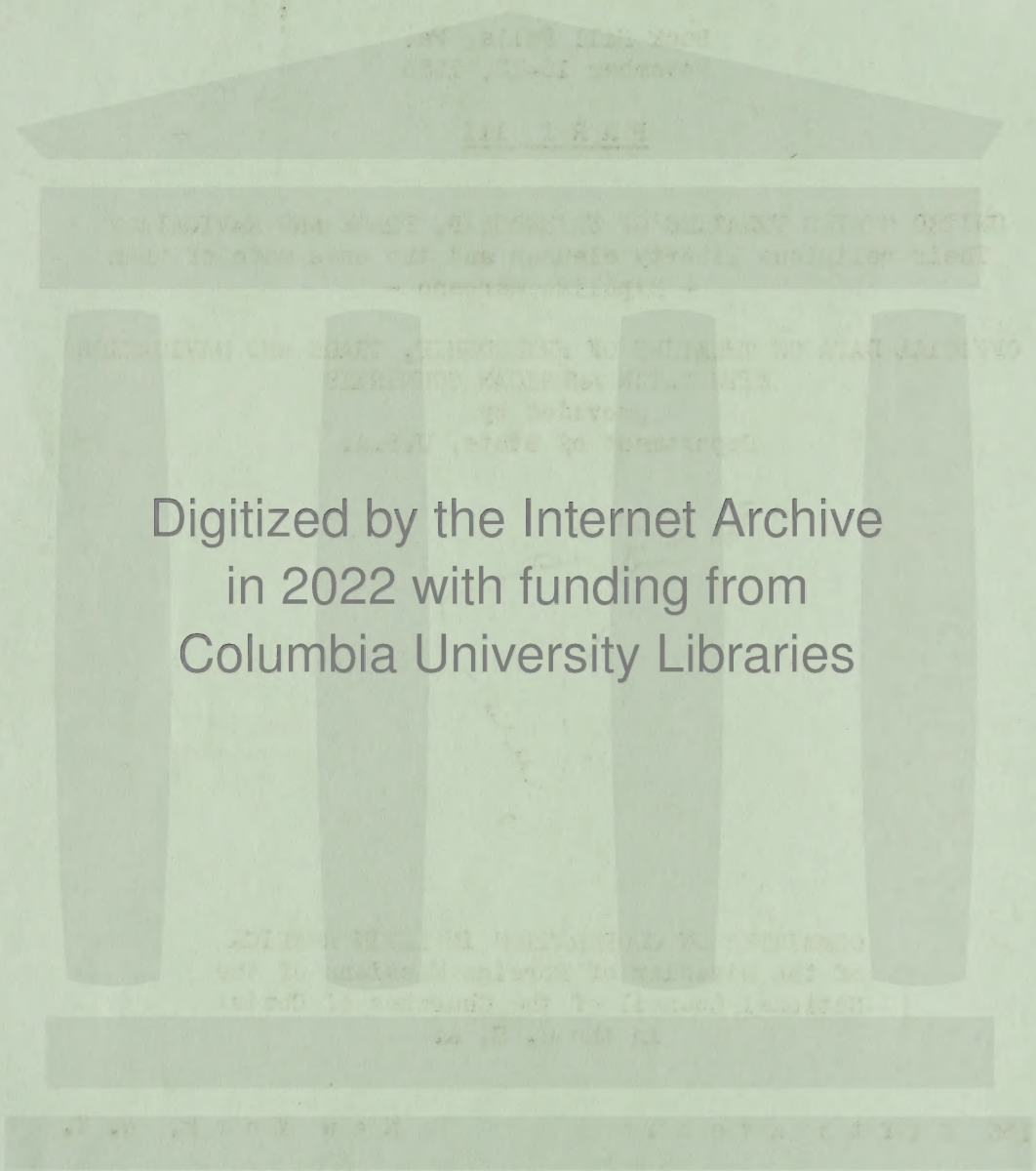

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UNITED STATES TREATIES OF FRIENDSHIP, TRADE AND NAVIGATION: THEIR RELIGIOUS LIBERTY CLAUSES AND THE USES MADE OF THEM

Hipólito Marcano

Treaty making is a long established practice among the members of the family of sovereign nations by which they oblige themselves in mutually determined rights and duties to each other. A treaty is primarily a compact or a solemn agreement between two or more sovereign states executed through their legally appointed officers with the legislative sanction of the supreme authority of the contracting parties. It is not a mere legislative process which transforms into written law the meeting of minds of the agents. It implies and denotes friendly and political relations between the parties in their broadest meaning as a token of mutual trust and good faith, which should be the guiding principle to interpret the specific subject or items covered by the treaty. The honor, dignity and interest of the respective parties to a treaty, are the points of reference and the unwritten footnotes of the compact. Those high spiritual values are -- or should be -- ever present during the negotiation and ratification of a treaty as well as during its interpretation and application.

Throughout the life of a treaty the specific terms related to the subject matter of the contract, and the intention and attitudes of the parties, are at stake. The biography and history of the document form an indivisible act to be interpreted in the highest spirit of uberrima fides for the mutual benefit and protection of the parties and of their nationals. The body politic of the sovereign powers bound by the treaty, their constitutional structure, and finally the inalienable rights of their respective nationals, should also be taken into consideration in a liberal interpretation of the compact, if such compact is to be considered as a double entry account of the public faith and honor of those bilaterally obligated by it.

Thus, neither the layman nor the jurist may conclude that those rights, vested upon the respective nationals of the signatory powers, are curtailed, reduced, or in any way impaired by the

terms of a treaty of friendship, trade or navigation. On the contrary each sovereign state binds itself to respect and protect the rights of citizens or subjects of the other signatory, while they are living or temporarily travelling within its own territorial jurisdiction, provided that general or specific reference is made to those constitutional rights. In this respect it is well to point out that although the rule of ejusdem generis could be applied in the construction of a treaty, especially when words or phrases are not clear enough or are doubtful as to their specific meaning, all relevant constitutional rights and jus gentium should be spelled out in the text, if our nationals are to be protected in the exercise of those rights, once they cross the frontiers of the world.

One of our most cherished constitutional rights is the freedom of worship. Our nation was built on the solid foundation of that principle, and our culture has grown up nurtured by that unquestionable spiritual and moral value. It is part of the American way of life, part of our collective psychology and point of departure of our rational process in matters of civil liberites.

Today, when the most sacred human rights are at stake in the cold and hot wars in every corner of the world, we must give top priority to our standards of religious liberty when wesit at the bargaining table to negotiate our treaties of friendship, trade and navigation. It does not follow that by so doing we are imposing our way of life on the other power across the table. On the contrary, by including specifically the clauses of religious liberty in the contract, we are not trespassing on the other nation's sovereignty or national honor. We are defending and protecting the constitutional and spiritual frontier of our own nationals to the same extent that we are willing to protect and defend the constitutional rights of their nationals. We are not being aggressive or imposing. We are being sentinels of our own hereditary principles of human understanding and friendship.

Nobility is no longer a characteristic of our American culture. It is a common trait and denominator of all cultures and civilizations. The world has grown too small and there is not much social and geographical room left for differentiations of our cultural traits and departamentalization of our attitudes, reactions and social complexes. The requirements of this scientific era, re-

quire a rethinking of our patterns of human and international relations - not to conform our values to this age - but to uphold and maintain our values against the perils of the creeping materialistic forces that threaten to destroy the lines of communication between God and man. The strategy of those organized forces of evil, that tend to rule the world and control the souls of men, is well known. All references to spiritual or moral values should be kept out of circulation, cloistered and locked in the classrooms of theological schools or within the starchy and ritualistic premises of the Temples. Outside, in the crossroads of human destiny, those values are not even mentioned. Other values and doctrines of secular nature are the light at the feet of man and a torch in his path. Little by little those values have displaced our values from the classical patterns of human relations. It is no wonder then that religious liberty clauses are so often omitted in the working papers and in the final draft of the treaties of friendship, trade and navigation.

This is a serious concern to us, because there is no clear-cut explanation for this sin of omission, except that in the minds of certain people the reference to religious liberty clauses might embarrass the other contracting party or put in peril the real objectives of the treaty, which might be the right to build an air base, the right to navigate our navy in foreign coastal waters, the use of harbors for defense measures, or the right to contril the production of any of the so-called strategic materials. That technique of treaty negotiation is a clear and present danger to our cultural foundations and a total reversal of our historic position as guardians of the fundamental principles of Christian truth which make men free.

If our nation was built upon the foundation that all men are created equal, and our Constitution specifically recites the principles of religious freedom, we can never justify the omission of those sacred and eternal rights in the expediency of material and transitory interests. To accept that theory is tantamount to accepting the barbarian strategy that the end justifies the means, even of the means include the negation or absconding of our faith to conform to the psychological complexes and whims of those who have no faith at all, but who have plenty of raw materials, good anchorage, fine lowlands, and good mines. Religious liberty clauses

are left out but in the end we achieve the reward of our preconceived aims. Again I insist that in the face of human mobility - especially American mobility among our Latin American neighbors - religious liberty clauses should not be implied but specifically recited in all treaties of friendship, trade and navigation. It is the only safeguard to protect our nationals in their God-given franchise of free worship, and the only means of showing to our neighbors and to the world our integrated personality around an integral liberty.

It is a well-recognized doctrine that a treaty is not only a compact between nations but also the "law of the land" as far as the United States is concerned. This means that a treaty may not in any way reverse or override the Constitutional principles, which are the accrued or vested rights of the people. The President of the United States has broad powers to negotiate and implement the ratification of treaties, and in some cases he has the sole power to enter into international agreements which need no ratification by the Senate, But in any case, the obligations of our country in a treaty or agreement cannot go beyond the constitutional boundaries. No treaty can stand a court test if it is inconsistent with our form of Government or if it is in conflict with our Constitution, or if in any way it interferes with the relations between the States and the Federal Government. These principles have been firmly established by the jurisprudence and are generally accepted as part of the ethics and procedure in treaty-making.

When a treaty of friendship, trade and navigation omits all reference to religious liberty clauses, certainly it is not in harmony with our Federal Constitution. We accept that a treaty - being a contract that covers specific subject matter negotiated between nations - cannot recite each and every one of our constitutional principles contained in the Bill of Rights, but if we are to protect our nationals we should be careful to include those fundamental principles that involve the personal liberty and dignity of the individual. Otherwise, we are limiting the scope of the Constitution when we negotiate with friendly nations to foster mutual friendship, to establish and control reciprocal trade and commerce which includes transportation, and to regulate navigation. Again I insist that in the absence of a convincing explanation, the omission of religious liberty clauses in our treaties is a direct attack on our basic liberties.

Treaty-making procedure

The power to negotiate and ratify treaties developed along with the delagated functions of the Federal Government by the original states on March 1, 1781, a treaty or contract could not bind any of the component states. But Congress assumed the power to make treaties, although there was not specific delegated power by the states to the Federal Government to do so. This assumption of power by Congress was recognized and sanctioned by the Supreme Court. In the case of Ware vs. Hylton, 3 Dall (U.S.) 199, 1 L ed. 568, Mr. Justice Chase, speaking for the high court said:-

> "The powers of Congress, during that whole period, were derived from the people they represented, expressly given, through the medium of their state conventions, or state legislatures; or that after they were exercised they were impliedly ratified by the acquiescence and obedience of the people ... The powers of Congress originated from necessity, and arose out of, and were only limited by, events; or, in other words, they were revolutionary in their very nature. Their extent depended on the exigencies and necessities of public affairs. It was absolutely and indispensably necessary that Congress should possess the power of conducting the war against Great Britain, and therefore if not expressly given by all (as it was by some of the states), I do not hesitate to say, that Congress did rightfully possess such power. The authority to make war of necessity implies the power to make peace, or the war must be perpetual. I entertain this general idea, that the several states retained all internal sovereignty; and that Congress properly possessed the great rights of external sovereignty, among others, the right to make treaties of commerce and alliance; as with France on the 6th of February, 1778."

As early as June 11, 1776, the Continental Congress was highly concerned with the technique of treaty making with foreign powers. It had the intention to join the family of free nations and one of the means to achieve this end was by international compacts. Although they were primarily concerned with the national problem of independence and constitution writing, they appointed

a committee to draft treaties to be submitted to other powers. On September 1776, this committee rendered its report and a model draft of a commercial treaty was approved by Congress.

Under the terms of the Articles of Confederation, Congress was specifically empowered to make treaties and alliances, provided nine states consented thereto. However, this delegated power was limited. No commercial treaty entered into by Congress on behalf of the United States could curtail or restrain the legislative power of the respective States from imposing the same taxes and duties on foreigners as their own citizens were subjected to, or from prohibiting the exportation or importation of any goods. See Articles of Confederation, Article 9.

It is obvious that the Founding Fathers wanted to put the native citizens in pari causa with aliens or nationals of other contracting nations. This should be the point of departure and constant reference for the modern procedure in treaty-making, especially when the rights and duties of our nationals are sometimes impaired or restrained to conform to the exigencies of foreign powers whose constitutional guarantees are less liberal than our own.

Under the Constitution of the United States, the Federal Government has the sole power to make treaties. See Article 2, Section 2, Paragraph (2). Ennumerating the duties of the President of the United States, it says:

> (2) He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.....

Apparently the Executive Branch was vested with the right to make or negotiate the treaty and the Senate with the right to ratify it. That does not mean that the Senate is obliged to adopt or reject in toto the proposed document. It may modify or amend the text. Haver v. Yaker, (Jacker v. Magee) 9 Wall (US) 32, L ed. 571. On the other hand, Congress is powerless to preempt the field of international negotiations. That power is vested in the Executive, alone. U.S. vs. Curtiss-Wright Export Corp., 299 U.S. 304, 81 L ed. 255.

This division of powers in the process of treaty-making is the product of judicial interpretation and practice. The letter of the Constitution makes no such distinctions. The words "by and with the advice and consent of the Senate", tend to associate the Executive and the Legislative Upper House in the elaborated process of treaty-making. Through judicial interpretation, however, this common constitutional phrase has become more and more a border line that separates and less and less a bridge that unites.

President Washington read carefully this clause of the Constitution, at a time when lawyers were not pestering the Executive office with confusing legal opinions, so he sought "the advice and consent " of the Senate in the negotiation of certain treaties, to find himself entangled with all kinds of difficulties with politicians and parlamentarians. He abandoned the method because it was highly unsatisfactory. From there on, the process was split in two different functions, which usually clash because of their antagonistic outlooks on the same subject.

It was not until 1816 that the Senate created the powerful standing Committee on Foreign Relations, which has served as a connecting and consulting agency between the President and the Senate on international policy. Even so, on frequent occasions they have clashed head-on with tremendous damage to our Foreign Policy and to our standing in international relations.

Vide:

The Senate and Treaties - Ralston Hayden - New York. 1920

Treaties, Their Making and Enforcement - Samuel B. Crandall, Chapt. VI, Washington, 1916

The Constitution and World Organization - Edward S. Corwin, Chapt. III, Princton University Press, 1944.

From 1789 to 1929 about 900 treaties were proclaimed by the President and some 200 were rejected or ammended in such a fashion that the President dropped all further negotiations.

Executive Agreements With Foreign Powers

Treaties are not the only legally binding documents entered into by our nation and foreign powers. Very frequently the President negotiates and signs documents or agreements with other nations which need not be submitted to the Senate for its ratification. Some of those agreements are specifically authorised by Congress and require only Congressional approval or subsequent implementation, whereas others are entered into by the President because of his executive or diplomatic powers as Chief of the State. An illustration of President agreements authorized by Congress are those entered into with many European powers as a result of the Lend Lease Act of March 11, 1941. These agreements are equally binding as a treaty and are also the "law of the land", and so have been upheld by the Courts of Justice. Field vs. Clark, 143 U. S. 649 (1892); Hampton, Jr. & Co. vs. U. S. 272 U. S. 494 (1928); U. S. vs. Pink 315 U. S. 203 (1942).

Apart from above mentioned agreements either authorized by Congress or made within the purview of Presidential powers, the Executive has entered into similar agreements of another nature. Some of these have been in the nature of formal exchange of diplomatic notes, the sum total of which show the meeting of minds of the parties, like the protocol of August 12, 1898 between the United States and Spain by which, as a result of the Spanish- American War, Spain relinquished all rights in Cuba and ceded Puerto Rico to the United States. These agreements do not have to be sanctioned by Congress although they are binding on the United States. In one instance, President Theodore Roosevelt entered into a Treaty with the Republic of Santo Domingo to take over its customs houses and operate them with U. S. civil and military personnel. The Senate refused to ratify the treaty. Roosevelt promptly ammended the document, called it an"agreement" and went ahead with his scheme without the sanction of Congress. He was advised by lawyers to drift away from politicians. The question still open to debate is whether these agreements should or should not be ratified equally by Congress, which represents the national will, inasmuch as these documents are ultimately applied in the field of private human rights.

Generally speaking that is the legal and constitutional scope of our treaties and agreements with other powers since the incep-

tion of the Republic. However, there is also a moral dimension to this political or diplomatic function. When the President - through his State Department - negotiates a treaty or an agreement, he has a starting point. He knows what the nation or our nationals need and he knows how to achieve his ends. Both parties are expected to make concessions. Both parties are called upon to meet the other half way, relinquishing rights and making sacrifices not conflicting with national honor and dignity. In the establishment of friendly relations, in the regulation of trade and in the control of navigation, the contracting parties have a lot to give and a lot to take. Both learn by the experience and both grow closer if they come to the bargaining table in good faith.

Nobody is supposed to negotiate out of strength, other than the moral strength of free peoples under God. It is at this point when the values that underlie our culture and integrate our civilization, should be displayed and faced with courage. On behalf of human brotherhood and international friendship, we are willing to understand with tolerance the other contracting party's points of view but we should request in return the same understanding for our culture and our way of life. Foreign nationals have the full protection ofthe laws, the Constitution and the Courts of Justice, while they live or travel within our boundaries.

Vide:

68 L ed. U. S. 256 and 6 R.C.L. p. 11,

Wong Wing vs. U. S. 163 U. S. 228; 41 L ed. 140

It is only natural to expect that our nationals should receive equal treatment when living or travelling in a country with which we have negotiated and signed a treaty of friendship, trade and navigation. I do not mean to pretend that friendly powers with which we negotiate treaties should ammend their fundamental laws or their constitutions to include our Bill of Rights. What I mean is that the guarantee to our freedom of worship should also be negotiated as a basic consideration in the treaty-making. To me, that is the moral dimension of the political or diplomatic act of negotiating a treaty with any foreign power.

Our Relations with Latin America

The term Latin America is a political misnomer. South of the Rio Grande we do not have any political entity under that name. We have twenty neighbors with similar cultural and historical background but which differ substantially among themselves and with whom treaties have to be carried out in different fashions. Although Central and South Americans have a common origin and a common background in many respects, they have heterogeneous psychological patterns of behavior within an homogeneous race consciousness. Faced with a set of facts as subject matter for a treaty or an agreement, not all Latin American States will react in the same way. National pride, dignity and honor are always at stake. Those intangible values come first and they are paramount to any other consideration. However, although that sentiment is unanimous among Latin Americans, the approach might differ according to the circumstances. The difference in approach might be due to their differences in political structure, their mixed cultures, or maybe the historic circumstances and attitudes towards the United States. Throughout Latin America there is an ever-present subconscious resentment against the "Colossus of the North". Sincere efforts have been made by our State Department to dig deep into that racial and social phenomenon to determine its causes and means of preventing its spreading. But we have not gone very far. The anti-American sentiment is there. It moves up and down as if it were the mercury in a thermometer. It all depends upon the kind of relations between governments or on the attitude of our nationals toward our southern neighbors. Due to tensions in the international situation, sometimes we are forced to cling to each other and we feel closer bonds of sincere friendship tying us together in one big continental family. But sometimes, any little incident - provoked by an irresponsible tourist, an unscrupulous mine foreman, a drunken sailor, a stiff-necked immigration officer, or an idiotic reporter - precipitates crisis and tension, which brings out that sub-conscious anti-Americanism.

Thus our pattern of relations with our Latin American neighbors has to be constantly reviewed and enriched with new experiences and in the light of the dynamic growth of this young continent. We made a bad start, a very bad one. The pattern of negotiation out of force with the weaker brothers did not create

respect for us, but fear and hate. We were not looked upon as a big brother but as the big bully always asking whether anybody wanted to start something. The presence of our Marines in Nicaragua, Santo Domingo and Mexico; our big yard-stick policy; even the narrow interpretations of the Monroe Doctrine were elements of an erratic Latin American policy. From the colonization up to the present date, we grew by leaps and bounds, whereas our Southern neighbors grew at a very slow pace. We acheived the highest success in industrial and commercial development, whereas their natural resources remain still untouched.

Those differences in growth and strength misled some people into theories like "our manifest destiny", which were obviously erroneous if not in their primary intentions, at least in their interpretation and application.

But we have covered a lot of ground. We have grown into the basic reality that we are partners in the human enterprise of collective thinking, collective defense and collective welfare. Our South American neighbors have also grown into different fields of endeavor and have different perspectives in their American Family relations. The growth will continue towards better understanding and more tolerance. It all depends upon our own attitudes and understanding of the nature and behavior of our neighbors and our willingness to share with them our duties and our obligations with culture and civilization as all of us - they and ourselves - see them through a common perspective.

Our Treaties with Latin American Countries

A very substantial number of our treaties and agreements of friendship trade and navigation have been negotiated and signed with Latin American states. As we grew closer - geographically and politically speaking - we needed each other more and more. Latin America depends chiefly on its exports of raw materials as a basis for their economic structure. Exports are a very substantial percentage of their national income, especially tin, oil, bananas, sugar, copper, nitrates, cocoa and rum. As a whole, Latin American countries export approximately 20% or more of their national income.

Vide:
Prof. Harris, New York, 1944,
Economic Problems in Latin America, Page 7.

In turn we have made Latin America one of our best customers, to whom we sell manufactured commodities and foodstuffs and where we make substantial capital investments. This tremendous development in commercial and industrial relations necessarily required scores of treaties and agreements to regulate our relations with the different countries. Sometimes those treaties have been negotiated out of force, sometimes out of threat - principally economic threat. Sometimes we have created the will to negotiate and the favorable reaction to out wishes. But today we have abandoned that wrong strategy and treaties reflect more and more the free will of the parties and their mutual necessities.

However, there are many forces pulling a d playing around bargaining tables which lead to international treaties. These forces operate on our side as well as throughout Latin America. Their object is to use the United States prestige and power to achieve their particular ends, without being apart in the negotiations. Their interests are the same everywhere no matter what flags are flying under the skies above. So they maneuver out of the shadow and in the twilight of unrecorded conversations and negotiations. They make representations through their alter ego or agents without need of identifying the principal. Their fields of operation are the foreign offices, the embassies, the means of public education and information, the centers of political power, etc. Those forces working behind the scenes have other poyalties and other interests, for which they work and sweat. They have nothing to lose and everything to gain, in the matter of the defense of their strategy across the Hemisphere.

Let me be more specific. As pointed out before, no foreign national has to worry about Religious Liberty within our national borders. That fundamental constitutional right is equally shared by our nationals and by aliens. Foreign powers negotiating with the United States do not have to insist that religious liberty clauses be inserted in any treaty, because with or without such clauses their nationals are protected by our Constitution and by our Courts of Justice. On the other hand, we have to be very careful as to the guarantee of that freedom when we negotiate, and should be particularly insistent that such freedom for our nationals be included in the treaties or agreements with other countries, because there are different levels of religious liberty throughout the different Latin American states.

The Roman Catholic Church is dominant throughout the South and in many instances goes hand in hand with the governments and other principalities and powers. That Church opposes all sorts of freedom of worship in those countries where it is dominant - and especially in those countries where it is the established Church. If they tolerate any constitutional guarantee favoring religious liberty, they see to it that such liberty is neutralized in its practical functions. They have grown for many centuries without opposition. Now that the Evangelical Churches are making a real impact on the basic cultural patterns of the peoples of America, they strongly object to the free action of our pastors, missionaries and religious workers south of the border, and they try every possible scheme to prevent their going South. They also try by all means to jeopardize the normal development of our Evangelical Churches, either by legal schemes or even by physical force. There is a gigantic conflict going on everywhere in Latin America. It is a small Evangelical Church struggling for its life and existence and a falling giant doing its best to prevent that growth. Of course we are aware of the fact that the falling giant has a lit of strength left, and when its own strength fails, it looks for support somewhere else. The battle is not yet done. It will take time, courage and energy and faith but we are confident that at the end the peoples of Latin America will be looking to Christ as their only hope.

Now, what is the role of these treaties in this struggle for the survival of Christ's Church in Latin America? In the first place, there are some misconceptions on our part when we deal with Latin America. When our negotiators come to the point of human rights in general and to religious freedom in particular, they take it for granted that all of Latin America is a Roman Catholic territory, where there is no need to talk about religious freedom. If they do not take such a conclusion for granted, it is injected into their minds by a sort of ecclesiastical osmosis and diplomatic pressure. The net result is that religious liberty clauses are left out altogether, or if they are included, they are worded in such a way that they mean practically nothing. Or they are specifically deleted from the text.

The CCLA made an inquiry as to this particular point throughout Latin America. The results are not conclusive but they are indicative of the point I have been trying to bring home heretofore. Out of the 20 Republics, there was no information on the religious

liberty clauses in treaties of friendship, trade and navigation from 8 countries (Argentina, Brazil, Chile, Costa Rica, Cuba, Ecuador, the Dominican Republic and Paraguay). There was a treaty with El Salvador in 1926 and one is pending with Colombia. Bolivia reported that there is one such treaty, but with no religious liberty clauses. There are treaties with Honduras, Mexico, Nicaragua, Panama and Venezuela but none of them even mentions religious liberty. There is no treaty with Peru, according to the correspondent, but Peru has similar treaties with other countries and is signatory of the Atlantic Charter and the Declaration of Human Rights. However, as one source puts it, "where the Roman Catholic Church is concerned, the signing of such documents makes no difference in practice with respect to the liberties of non-Roman Catholics. The Declaration does not operate for dissident minorities". These liberties are only invoked in cases where they clash with the civil authority and are curtailed in their exercise of absolute power like in Argentina during the last months of Peron's regime. But they are not applied to protect the Evangelical minorities when their rights are ignored.

A treaty of Friendship, Commerce and Navigation was negotiated with the Republic of Haiti with protocol and exchange of notes on March 3, 1955. This is one of the types of treaty that does not necessarily need ratification by Congress, but we hope it will be submitted for approval. No reference to religious freedom is made in the Treaty. The reasons given for this omission could be summarized as follows: that this is a treaty of commerce and questions of religion would not appear on such a document; that such clauses are unnecessary in this treaty because the Constitution of Haiti specifically contains religious liberty clauses. Official quarters admit, however, that in many instances religious liberty clauses are included in this type of document, even in the presence of similar guarantees in the constitutions of the signatory powers.

In regard to Uruguay - one of the most advanced and developed countries in Latin America - there is pending a "draft" treaty of friendship, trade and navigation, which has not been officially ratified by the Government of this Republic. It would be interesting to inquire into the reasons for the failure to act on the same, but in order to let you draw your own conclusions, I would like to read excerpts from Articles 1, 5 and 6 of the pending "draft" treaty:

> From Article 1. Nationals of either Party, within the territories of the other Party, shall be permitted (a) to travel

therein freely, and to reside at places of their choice; (b) to enjoy liberty of conscience; (c) to hold both private and public religious services; and (d) to gather and to transmit material for dissemination to the public abroad, and otherwise to communicate with other persons inside and outside, such territories by mail, telegraph and other means open to general public use.

From Article 5. Nationals and companies of either High Contracting Party shall be accorded, within the territories of the other Party, national treatment with respect to : (a) engaging in commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, religious, philanthropic and professional activities;

In conclusion, there are two treaties which have not been ratified yet by the other contracting party but which contain full guarantees of religious freedom for nationals of both parties to the compact. All over Latin America, with minor exceptions, there is a total absence of even an indirect mention of religious liberty in these treaties, which operate for the benefit of both countries, of both governments and of both human communities. This is not the occasion to fix responsibility for these omissions, but it is time to go on record with our vigorous protest for this serious mistake in the broad outlook of human freedom, of which we are participants and co-defenders.

The inclusions of these clauses in treaties of friendship, trade and navigation will be beneficial to the nationals of both countries not only when travelling abroad but also in their religious activities at home. Our Latin American brethren could make very effective use of these clauses in their local dealings with their own governmental authorities. They know their strategy or will develop one. All we should do is to provide them with the tools to work their own way out of the sad night of religious persecution into the dawn of religious liberty. That is their task and our task. If we are partners in Christ, we must share the glory as well as the tears and the sweat that make life in Christ more noble, richer and more abundant.

OFFICIAL DATA ON TREATIES OF FRIENDSHIP, TRADE AND NAVIGATION
WITH LATIN AMERICAN COUNTRIES
Provided by the Department of State, U. S. A.

February 7, 1956

Dear Mr. Yoder:

A provision on religion was first included in a United States treaty in the treaty of peace and commerce negotiated by John Adams with the Netherlands and signed in 1782. It provides freedom of conscience and unmolested worship, but subjects public worship to the laws of the host country. Like provisions were included in the 1783 treaty with Sweden and the 1785 and 1799 treaties with Prussia.

In the series of treaties with the Latin American republics initiated by the United States in the 1820's, the provision on religion assures little more than freedom of conscience. This provision was typical of our treaties until the late 1830's. Beginning in the latter period, some of our treaties contain a broader provision, stipulating not only freedom of conscience, but the right to hold services both in private houses and "in the chapels or places of worship appointed for that purpose". In some of these treaties, it is clear that the worshipers may do the "appointing", in others that the host government may participate in that function, and in still others the party having authority to make the choice is doubtful.

The national and most-favored-nation treatment principle was first applied to religious activities in the treaty series that began with the treaty of friendship, commerce and consular rights concluded with Germany in 1923. The provision is subject to a "local laws" clause, however, which may throw a doubt upon its effectiveness. The treaties of this series also contain a separate provision on freedom of conscience and worship comparable to those referred to above as having been utilized in the late 1930's and subsequently.

Thirteen treaties in the present series, beginning in 1946, contain provisions on freedom of conscience and the right to hold services. Nine of these treaties also provide national and most-

-favored-nation treatment as to religious activities, while those with Greece and Ethiopia, provide only most-favored-nation treatment, that with Uruguay, provides only national treatment, and that with Iran provides neither national nor most-favored-nation treatment.

A number of treaties were concluded without provisions on religion, particularly in the middle and latter half of the 19th century. Information as to the reasons for such omissions is not readily available. In view of the general nature of such treaties, this Government may not, in some cases, have proposed inclusion of provisions on religion. These treaties emphasize matters of commerce and navigation generally and some, consequently, contain few if any provisions relating to personal rights.

The treaty of friendship, commerce and navigation with Haiti, signed at Port-au-Prince on April 29, 1955, which was submitted to the Senate for approval on June 22, 1955, does not contain provisions relating to religion. Although both Governments are devoted to the principle of religious liberty, differences developed during the negotiation as to how the provisions on religion should be formulated. These differences could not be readily resolved, and it was consequently decided not to include provisions on the subject.

I hope this information is useful to you.

Sincerely yours,

(Signed) Harry W. Seamans

Information Liaison Officer
Public Services Division

EXAMPLES OF PROVISIONS RELATING TO RELIGION

1824 - Colombia - treaty of peace, friendship, commerce and navigation

Article XI. It is likewise agreed that the most perfect and entire security of conscience shall be enjoyed by the citizens of both contracting parties in the countries sub-

ject to the jurisdiction of the one and the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country.

Similar provisions in following treaties:

1825 - Central American - convention of peace, friendship, commerce, and navigation
1/#1828 - Brazil - treaty of peace, friendship, commerce and navigation
1831 - Mexico - treaty of amity, commerce and navigation
1/#1832 - Chile - convention ofpeace, friendship, commerce and navigation
1836 - Perú-Bolivian Federation - convention of peace, friendship, commerce, and navigation
1/#1839 - Ecuador - treaty of friendship, commerce and navigation
1/#1849 - Guatemala - treaty of peace, friendship, commerce and navigation
1851 - Perú - treaty of friendship, commerce and navigation
#1858 - Bolivia - treaty of friendship, commerce and navigation
1864 - Haiti - treaty of amity, commerce and navigation, and for the extradition of fugitive criminals
1870 - Perú - treaty of friendship, commerce and navigation
1887 - Perú - treaty of friendship, commerce and navigation
1/#1836 - Venezuela - treaty of friendship, commerce and navigation

Article XIV. The citizens of the United States residing in the territories of the Republic of Venezuela shall enjoy the most perfect and entire security of conscience, without being annoyed, prevented, or disturbed on account of their religious belief.

Treaty in force in whole or in part.

1/ Provisions relating to commerce and navigation have been terminated, but provisions of peace and friendship are still in force.

Neither shall they be annoyed, molested, or disturbed in the proper exercise of their religion in private houses, or in the chapels or places of worship appointed for that purpose, with the decorum due to divine worship, and with due respect to the laws, usages, and customs of the country.

Similar provisions in following treaties:

#1846 - Colombia - treaty of peace, friendship, commerce and navigation
1850 - El Salvador - treaty of peace, friendship, commerce and navigation
1860 - Venezuela - treaty of amity, commerce, navigation, and for the surrender of fugitive criminals
1867 - Dominican Republic - convention of amity, commerce, and navigation and for the surrender of fugitive criminals
1870 - El Salvador - treaty of peace and friendship, commerce and consular privileges

#1851 - Costa Rica - treaty of amity, commerce and navigation

Article XII . . . . They shall not be disturbed, molested, or annoyed in any manner on account of their religious belief, nor in the proper exercise of their religion, either within their own private houses or in the places of worship destined for that purpose, agreeably to the system of tolerance established in the territories of the two high contracting parties; provided they respect the religion of the nation in which they reside, as well as the constitution, laws and customs of the country. . .

Similar provision in following treaty:

1864 - Honduras - treaty of amity, commerce, and navigation

#1853 - Argentina - treaty of friendship, commerce and navigation

Article XIII. They shall not be disturbed, molested nor annoyed in any manner, on account of their religious beliefs,

nor in the proper exercise of their peculiar worship, either within their own houses or in their own churches or chapels, which they shall be at liberty to build and maintain, in convenient situations, to be approved of by the local Government, interfering in no way with, but respecting the religion and customs of the country in which they reside.

1859 - Paraguay - treaty of friendship, commerce, and navigation

Article XIV. The citizens of either of the two contracting parties residing in the territories of the other shall enjoy, in regard to their houses, persons, and properties, the protection of the Government in as full and ample a manner as native citizens.

In like manner the citizens of each contracting party shall enjoy the territories of the other, full liberty of conscience, and shall not be molested on account of their religious belief; . . .

1867 - Nicaragua - treaty of friendship, commerce and navigation

Article XII. They shall not be disturbed, molested, or annoyed in any manner on account of their religious belief, nor in the proper exercise of their religion, agreeably to the system of tolerance established in the territories of the high contracting parties; provided they respect the religion of the nation in which they reside, as well as the constitution, laws, and customs of the country. . .

#1951 - Israel - treaty of friendship, commerce, and navigation

Article II.

2. Nationals of either party, within the territories of the other Party, shall be permitted . . . (b) to enjoy liberty of conscience; (c) to hold both private and public religious services . . .

3. The provisions of the present Article shall be subject to the right of either Party to apply measures that are necessary to maintain public order and necessary to protect the public health, morals and safety.

Article VIII.

3. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to engaging in . . . religious. . . activities within the territories of the other Party, and shall be accorded the right to form associations for that purpose under the laws of such other Party . . .

Article XI.

1. . . . nationals and companies of either Party engaged in . . . religious . . . activities within the territories of the other Party, shall not be subject to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of such other Party, more burdensome than those borne by the nationals and companies of such other Party.

4. In the case of the companies of either Party engaged in trade or other gainful pursuit within the territories of the other Party, and in the case of nationals of either Party engaged in trade or other gainful pursuit within the territories of the other Party but not resident therein, such other Party shall not impose or apply any tax, fee or charge upon any income, capital or other basis in excess of that reasonably allocable or apportionable to its territories, nor grant deductions and exemptions less than those reasonably allocable or apportionable to its territories. A comparable rule shall apply also in the case of companies organized and operated exclusively for . . . religious . . . purposes.

(It is noted that only the provisions specifically relating to religion are indicated above. However, certain general provisions, such as those relating to the acquisition of property by companies, are also applicable.)

Provisions basically similar to, but with various formulations of, those contained in the 1951 treaty with Israel are included in the following treaties:

#1949 - Uruguay - treaty of friendship, commerce and economic development - Approved by the Senate, but not yet in force (Includes a national treatment pro-

vision, but not a most-favored-nation treatment provision respecting religious activities)

##1951 - Colombia - treaty of friendship, commerce and navigation - Not yet in force; withdrawn from the Senate for further negotiation

##1956 - Nicaragua - treaty of friendship, commerce and navigation - Will be submitted shortly to the Senate for approval

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Not yet in force